

In the Matter of Merchant Mariner's Document No. Z-688014-D1
Issued to: OSCAR TORRES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

671

OSCAR TORRES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 3 March, 1953, an Examiner of the United States Coast Guard at New York, N.Y., revoked Merchant Mariner's Document No. Z-688014-D1 issued to Oscar Torres upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as wiper on board the American SS EXCELSIOR under authority of the document above described, on or about 14 February, 1953, while said vessel was in the port of New York, he wrongfully had in his possession a narcotic substance, namely gum opium.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made an opening statement and introduced in evidence the testimony of a port patrol officer of the port of New York; a report of the United States Customs Laboratory dated 16 February, 1953, and an excerpt from the shipping articles of SS EXCELSIOR.

In defense, Appellant offered in evidence his own sworn testimony.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Appellant's Merchant Mariner's Document No. Z-688014-D1 and all other licenses, certificates of service and documents issued to this Appellant.

From that order, this appeal has been taken, and it is urged:

Since the substance in Appellant's possession was unknown to him to be a drug, he cannot be charged with unlawful possession of

a narcotic substance; the sentence imposed is severe and has created a terrific hardship.

APPEARANCE: Matthew H. Brandenburg, Esq., of New York City, for Appellant.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 14 February, 1953, Appellant was serving as wiper on board the American SS EXCELSIOR and acting under authority of his Merchant Mariner's Document No. Z-688014-D1, while said vessel was at Pier 21, Staten Island, in the port of New York, N. Y.

When leaving the pier carrying a suitcase on that date, Appellant was stopped and searched by a Port Patrol Officer who found articles, previously undeclared, in the suitcase and on Appellant's person. Examination of Appellant's wallet discovered the substance, later identified as crude opium, in a compartment which required Appellant's assistance to open.

Appellant claimed then, and later, that he did not know the nature of the substance which he obtained from an Arab in Alexandria, Egypt in exchange for an old shirt; that he took it merely for the purpose of using it as a stimulant.

It is claimed Appellant supports his wife and mother; although he stated he was not living with his wife at the time of this hearing.

OPINION

I am not favorably impressed with any part of Appellant's story respecting the circumstances attending his acquisition of this crude opium. the fact that he secreted the substance in a compartment of his wallet which was not readily accessible to examination; and his willingness to "just take a chance" on some substance obtained in a foreign port when considered with his service of several years at sea, give little credence to his denial of knowledge concerning its nature when he was apprehended.

The Examiner has aptly stated Coast Guard policy respecting persons in the merchant marine who have any association with drugs and narcotics. I see no reason to interfere with the Order dated New York, N. Y., on 3 March, 1953; and that Order is AFFIRMED.

Merlin O'Neill

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 11th day of June, 1953.